

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 United States of America,

4 Plaintiff

5 v.

6 Eduardo Ruben Lopez,

7 Defendant

Case No. 2:23-cr-00055-CDS-DJA

Order Denying Appeal of Magistrate
Judge's Order Denying
Motion to Compel

[ECF No. 276]

9 Defendant Eduardo Lopez appeals an order (ECF No. 239) issued by United States
10 Magistrate Judge Daniel Albregts denying his motion to produce a copy of Special Agent
11 Fryxell's personnel file. Appeal, ECF No. 276.¹ The United States opposes the appeal. Opp'n,
12 ECF No. 294.

13 When reviewing the order of a magistrate judge, the order should only be set aside if the
14 order is clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); LR IB 3-1(a); 28 U.S.C. §
15 636(b)(1)(A); *Laxalt v. McClatchy*, 602 F. Supp. 214, 216 (D. Nev. 1985). The "clearly erroneous"
16 standard applies to a magistrate judge's factual findings, whereas the "contrary to law" standard
17 applies to a magistrate judge's legal conclusions. *See, e.g., Grimes v. City & Cnty. of San Francisco*, 951
18 F.2d 236, 240 (9th Cir. 1991).

19 Having conducted a de novo review of the personnel file, I find Judge Albregts's order is
20 neither contrary to the law nor clearly erroneously. I concur with Judge Albregts and find that
21 the contents of the personnel file are not relevant to the instant action and do not otherwise
22 constitute *Brady*, *Gigilio*, or *Jencks* material. I further decline to preserve a copy of the personnel
23 file as it contains no material information. *See United States v. Price*, 566 F.3d 900, 903 (9th Cir.
24 2009) (Material information includes "evidence that might tend to impeach a government
25 witness[.]"). Further, the court finds Lopez's request that a copy be preserved is akin to asking

26 ¹ This objection was erroneously docketed as a "response."

1 the court to interfere with the practices of the executive branch, especially in light of the file
2 being reviewed by two separate judges. The Ninth Circuit has long instructed that the courts
3 should only exercise their supervisory authority—which preserving the personnel file would
4 require—when there is “a clear basis in ‘fact and law’ for doing so.” See *United States v. Gatto*, 763
5 F.2d 1040, 1046 (9th Cir. 1985) (quoting *United States v. Chanen*, 549 F.2d 1306, 1313 (9th Cir.
6 1977)). There is no such basis here. Accordingly, Lopez’s appeal is denied.

7 Conclusion

8 IT IS HEREBY ORDERED that Lopez’s appeal of Magistrate Judge Albregts’s order
9 denying his motion to compel disclosure of Special Agent Fryxell’s personnel file [ECF No. 276]
10 is DENIED. The August 13, 2024, order (ECF No. 239) is AFFIRMED in full. The court
11 declines to preserve of a copy of the file, so it will be destroyed.

12 Dated: January 22, 2025

13
14 
15 Cristina D. Silva
16 United States District Judge
17
18
19
20
21
22
23
24
25
26